Appendix 1
A Primer on Public School Capital Outlay Funding in New Mexico

By Sharon Ball, New Mexico Legislative Council Service

Public school *capital outlay* funding, that is, funding used to purchase *capital assets* like buildings (as opposed to operating funds that are used to pay ongoing *expenses that are not capital assets)* is both a local and a state responsibility in New Mexico.

School districts can generate capital outlay revenues *from the state* through two statutory measures: one that guarantees a level of funding based on a district's ability to support its capital outlay needs through local property taxes, and another that provides funding to meet state adequacy standards for school facilities.

School districts can generate capital outlay revenues *locally* from the sale of bonds, direct levies, earnings from investments, rents, sales of real property & equipment, and other miscellaneous sources.

DETAILS ON STATE SOURCES OF REVENUE:

***Public School Capital Improvements Act*:**
Also called "SB9" or the "two-mill levy," this funding mechanism allows districts, with voter approval, to impose a levy of up to two mills[1] for a maximum of six years.

Participating districts are guaranteed a certain level of funding supplemented with state funds if the local tax effort does not generate the guaranteed amount. The "program guarantee" is based on the school district's 40th day total program units[2] multiplied by the matching dollar amount ($70 per program unit, plus consumer price index adjustments) multiplied by the mill rate stated in the voter approved resolution. The total revenue generated by the two-mill levy is subtracted to determine the amount of "matching," or guarantee funds the district will receive from the state (see also Public School Capital Improvements Act under "Local Support").

The Public School Capital Improvements Act also guarantees each district whose voters agree to impose the levy a minimum distribution from state funds of approximately $5 per mill per unit (with yearly adjustments based upon the consumer price index).

***Public School Capital Outlay Act*:**
Enacted in 1975 and formerly called "critical capital outlay," this funding mechanism has provided for state funding of critical school district capital outlay needs that could not be met by school districts after they had exhausted other sources of funding. Generally, these were districts that had imposed the SB9 levy and were bonded to "capacity." Amendments enacted beginning in 2003, however, have changed the former "critical capital outlay" process to a new standards-based process that all school districts may access regardless of bonded indebtedness. The new

[1] A *"mill"* is $.001. A mill levy is the number of dollars a taxpayer must pay for every $1,000 of assessed value of taxable real property. In New Mexico, one third of the assessed value of qualifying real property is taxable, so a two mill levy would cost a property owner $2.00 for each $1,000 of taxable assessed value. A property worth $100,000 in assessed value would have a taxable value of $33,000. A two mill levy would therefore cost this property owner $66.00 (that is, $2.00 x 33 = $66.00)

[2] On average, a student generates approximately two program units.

process is based on the public school facilities adequacy standards that the Public School Capital Outlay Council (PSCOC) adopted in September 2002.

Provided for in statute, the PSCOC is required to investigate all applications for grant assistance from the Public School Capital Outlay Fund and determine grant amounts for each qualifying applicant district. The council's membership consists of the following representatives (or their designees):

- **Secretary of the Department of Finance & Administration (DFA)**
- **Secretary of Education**
- **Governor**
- **President of the New Mexico School Boards Association**
- **Director of the Construction Industries Division**
- **President of the Public Education Commission**
- **Director of the Legislative Education Study Committee**
- **Director of the Legislative Finance Committee**
- **Director of the Legislative Council Service**

Through legislation enacted in 1999, 2001, and 2003, and later amended, the standards-based public school capital outlay program was developed and established partially in response to a 1998 lawsuit filed in state district court by the Zuni Public Schools and later joined by the Gallup-McKinley County Public Schools and the Grants-Cibola County Public Schools. State district court Judge Joseph Rich found, in a partial summary judgment rendered in October 1999, that, through its public school capital outlay funding system, which relied primarily upon local property tax wealth to fund public school capital outlay, the state was violating that portion of the state constitution that guarantees establishment and maintenance of a "uniform system of free public schools sufficient for the education of ...all children of school age" in the state.

In 2001, the legislature also established a Deficiencies Corrections Program (DCP) to identify and correct serious deficiencies in all public school buildings and grounds that may adversely affect the health or safety of students and school personnel. All districts received DCP funding based on evaluation of deficiencies. Currently, all districts' DCP projects are completed or near completion.

In 2003, the legislature enacted a state share funding formula to take into account the availability of school district revenues from both bond levies and direct mill levies that support capital outlay. Relying primarily on the relative property tax wealth of a school district as measured by assessed property tax valuation per student, the funding formula calculation also takes into account the total mill levy applicable to residential property of the district for education purposes. The formula recognizes that the maximum state share of the most property-poor districts in the state can be a total of 100 percent state funding. The overall formula provides approximately an average state share for all districts of approximately 50 percent, while providing for a minimum state share of 10 percent.

Also in 2003, the legislature created the Public School Facilities Authority (PSFA) to serve as staff to the PSCOC and, under PSCOC oversight, to administer the public school capital outlay standards-based program, which was implemented for the first time in 2004. The PSCOC developed the New Mexico Condition Index (NMCI), which ranks every facility in every school district based upon relative need, from the greatest to the least. The current NMCI database includes all 89 school districts, approximately 800 public school buildings in these districts, and 65,000 separate, distinct systems in those buildings. In all, about 200,000 specific line items feed into nine weighted categories. Working with PSFA staff, each school district is responsible for updating its respective buildings' database as projects are funded.

Each year, the PSCOC updates and publishes the NMCI-ranked list, which includes the estimated cost of repair or replacement of each need on the list. In 2010, the total cost of repair or replacement for all of the state's school district facilities was about $3.4 billion for existing facilities. It did not include estimated costs for constructing new facilities in high-growth areas. Since the state lacks the resources to fund all facilities' needs at once, each year, the PSCOC works down from the top of the list to fund needs as available revenues allow. Once the need has been funded, it drops down to the bottom of the ranked list, and lower level needs accordingly move up in priority.

Within the ranked needs database, deficiencies are divided into categories. Categories with higher importance, including life, safety, or health needs, get higher relative weights, placing those projects higher on the priority list.

NMCI Ranking Categories and Weights:

	Data Category	***Weight***
1	**Adequacy, life, safety, health**	**3.50**
2	**Potential mission impact/degraded**	**1.50**
3	**Mitigate additional damage**	**2.00**
4	**Beyond expected life**	**0.25**
5	**Grandfathered or state/district recommended**	**0.50**
6	**Adequacy: facility**	**1.00**
7	**Adequacy: space**	**3.00**
8	**Adequacy: equipment**	**0.50**
9	**Normal—within lifecycle**	**0.25**

In addition, adequacy of space is highly weighted so that districts' needs generated by population growth also move those projects higher on the priority list.

The primary source of state funding for the standards-based process is the issuance of Supplemental Severance Tax Bonds (SSTBs). These bonds are issued by the state Board of

Finance and paid for with revenue realized from taxes levied upon the extraction of oil and natural gas. Legislative reauthorization for the issuance of Supplemental Severance Tax Bonds on a year-to-year basis is not required, a condition that makes SSTBs a dedicated funding stream for public school capital outlay. Since its beginning in 2003, the standards-based funding process has provided over $1.4 billion in state funding for public school capital outlay.

Lease Assistance Payments:
State statute authorizes the PSCOC to make grants to school districts and charter schools from the Public School Capital Outlay Fund to assist with lease payments for classroom space. The grants amount to the lesser of the actual lease payment or $700 per student (adjusted yearly based on the Consumer Price Index (CPI)).

Direct Legislative Appropriations:
Sponsored by individual legislators, direct legislative appropriations are capital outlay project funding targeted for specific projects within the school district. Revenue sources can include the general fund, severance tax bonds, or statewide general obligation bonds. For FY 09, the legislature appropriated approximately $39 million (which was reduced to approximately $25.9 million after executive vetoes) from the general fund and from the sale of severance tax bonds for capital outlay projects and equipment in public school districts.

In response to state district court findings related to the Zuni Lawsuit regarding the disequalizing effect of direct legislative appropriations for capital outlay expenditures for school districts or individual schools, the 2003 legislature enacted a measure to require that an offset be applied against the state share of funds awarded to a school district by the PSCOC for all capital outlay projects (including those for educational technology) beginning with the 2003 legislative session. The offset is an amount based on the state share formula equaling 100 percent minus the state share percentage calculated by the formula, times the amount of the legislative appropriation, as shown in the example below:

Example of How the Legislative Offset Works:

Legislative appropriation to a school	**$1,000**
PSCOC award to that school's district	**$2,000**
That district's local match percent	**40%**
Offset reduction in district's PSCOC award calculation ($1,000 x 40%)	**($400)**
District's net PSCOC award amount ($2,000 - $400)	**$1,600**
Total funds received by district ($1,000 + $1,600)	***$2,600***

The most significant effect of the offset is not to reduce total funds that the district receives, but to potentially reduce funds available for higher priority needs, if the direct appropriation was for a lower-priority project than projects for which the district had applied for PSCOC award funding. In this case, the higher priority projects would have funding levels reduced by the amount of the offset.

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DETAILS ON LOCAL SOURCES OF REVENUES:

Local General Obligation (GO) Bonds:

GO bonds allow local school districts to seek voter approval to raise revenues to erect, remodel, make additions to, or furnish school buildings; to purchase or improve school grounds; to purchase computer hardware or software for student use in the classroom; or any combination of these purposes. Each district's issuance of bonds is subject to the constitutional (Article IX, Section 11, NM Constitution) limit of six percent of the assessed valuation of the district. Prior to the bond election, the district must request that the Public Education Department (PED) verify the district's remaining bonding capacity.

If the election is successful, the local school board, subject to the approval of the Attorney General, may begin to issue the bonds. The authorized bonds must be sold within four years of voter approval.

Public School Capital Improvements Act:

Commonly referred to as "SB9" or the "two-mill levy," this funding mechanism allows school districts to ask voters to approve a levy of up to two mills for a maximum of six years.

Funds generated through imposition of the two-mill levy may only be used to:

- Erect, remodel, make additions to, provide equipment for, or furnish public buildings;
- Purchase or improve public school grounds;
- Maintain public school buildings or public school grounds, including the purchase or repair of maintenance equipment, participation in the facility information management system (FIMS), make payments under contracts with regional education cooperatives (RECs) for maintenance support services and expenditures for technical training and certification for maintenance and facilities managements personnel, excluding salaries of school district employees;
- Purchase student activity buses for transporting students to and from extracurricular activities; and/or
- Purchase computer software and hardware for student use in classrooms.

The Public School Buildings Act:

Often referred to as HB33, the Public School Buildings Act allows districts to ask voters to approve the imposition of up to 10 mills for a maximum of six years on the net taxable value of property in the district.

HB33 funds may only be used to:

- Erect, remodel, and make additions to, provide equipment for, or furnish public school buildings;
- Make payments in accordance with a financing agreement entered into by a school district or a charter school to lease a building or other real property with an option to purchase for a price that is reduced according to payments made;

- Purchase or improve school grounds;
- Purchase activity vehicles to transport students to and from extracurricular activities (This authorization does not apply to the Albuquerque school district); and
- Pay for administration of public school capital outlay projects up to five percent of total project costs.

A limitation to the use of HB33 requires that the voter-authorized HB33 tax rate, when added to the tax rates for servicing the debt of the school district and the rate authorized under the Public School Capital Improvements Act (SB9), cannot exceed a total of 15 mills. If so, the HB33 rate would be adjusted downward to compensate. This funding mechanism is most useful for districts with high assessed valuation and low bonded indebtedness.

Educational Technology Equipment Act:

Enacted in 1997, the *Educational Technology Equipment Act* provides the enabling legislation to implement a constitutional amendment approved by voters in 1996 to allow school districts to create debt, without submitting the question to voters, to enter into a lease-purchase agreement to acquire educational technology equipment.

Public Building Energy Efficiency and Water Conservation Act:

This is a self-funded program that allows school districts to enter into a guaranteed utility savings contract with a qualified provider to reduce energy, water, or conservation-related operating costs, if the cost of the program does not exceed the cost savings over a period of not more than ten years.

DETAILS ON FEDERAL SOURCES OF REVENUES

Impact Aid Funds:

The federal government provides certain funds to school districts in lieu of local property taxes for children residing on federal lands or children having parents working on federal property.

Forest Reserve Funds:

Fifty-seven school districts in 22 New Mexico counties receive Forest Reserve funds. The counties in which these school districts are located receive 25 percent of the net receipts from operations (primarily timber sales) within their respective reserve areas.

DETAILS ON MISCELLANEOUS SOURCES OF REVENUES

Districts can also derive capital outlay funds from such sources as donations, earnings from investments, rent, and sale of real property and equipment. The legislature can also appropriate limited funds for capital outlay emergencies to the Public Education Department (PED) for distribution to public school districts, based upon need.